

Decision No. 84174**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 HOLIDAY AIRLINES, INC., a California)
 corporation, for authority to transport)
 local passengers between all airports) Application No. 53266
 on Holiday's system where flights can) (Filed April 14, 1972)
 be operated subject to the condition)
 that all flights shall originate or)
 terminate at Lake Tahoe.)

OPINION AND ORDER DISMISSING
PETITION FOR REHEARING

On September 14, 1973, the Commission issued Decision No. 81893 in the above-entitled matter. In that decision, we removed the condition in Holiday Airlines (Holiday) certificate of public convenience and necessity which required that all passengers either originate or terminate at Tahoe Valley Airport (TVL).

Pacific Southwest Airlines (PSA), and Air California (Air Cal), protestants in that proceeding, filed petitions for rehearing and/or modification of that decision on September 24, 1973. PSA and Air Cal alleged that the Commission erred in that it granted the modification without making a finding that a public need exists for the additional local service in the northern California-southern California corridor as required by Section 2753 of the Public Utilities Code. ^{1/} By its Decision No. 82631 dated March 26, 1974, the Commission granted rehearing limited to the issue of the public need for local service in

^{1/} Section 2753, in part: "In awarding certificates of public convenience and necessity pursuant to Section 2752, the Commission shall take into consideration, among other things,... the need for the service, and any other factors which may affect the public interest."

the northern California-southern California corridor. The order granting rehearing did not stay the effective date of the modification. On April 17, 1974, PSA filed a motion for the suspension of the operating authority granted in Decision No. 81893 pending proceedings on rehearing. At a prehearing conference held on May 17, 1974, the parties agreed that a hearing on the suspension request was not necessary and briefs would be filed on the issue of the construction of Section 2753 with respect to the factor of public need for the service in the corridor.

On January 7, 1975, the Commission issued Decision No. 83962, captioned Opinion On Rehearing, which denied the motion of PSA to suspend the operating authority granted in Decision No. 81893 and affirmed with modifications Decision No. 81893. In Decision No. 83962 the Commission made separate findings and conclusions on the criteria of Section 2753, including need for the service, and the material issues that determined the basis of public convenience and necessity as required by Decision No. 82631.

On January 20, 1975, PSA filed a petition with the Commission, captioned Petition of Pacific Southwest Airlines, Protestant, for Rehearing After Decision No. 83962. In its petition, PSA alleges again that the Commission failed to properly construe the criteria of public need in Section 2753 of the Public Utilities Code, as well as alleging several other errors.

The Commission finds it unnecessary to decide the merits of PSA's petition. The claims of error cited by PSA are repetitive of those made by PSA previously in the proceedings on Application 53266. Decision No. 83962 is a decision on rehearing in response to the order of rehearing in Decision No. 82631.

In accordance with Section 1756 of the Public Utilities Code, the appropriate remedy for PSA was to apply to the California Supreme Court for a writ of review for the purpose of having

the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. ^{2/}

The filing of a petition for rehearing of or after a decision on rehearing is not an appropriate matter in these proceedings and will not be considered by this Commission. Equity to the Applicant as well as statutory requirements direct that administrative proceedings should become final and judicial review be made available upon the issuance of a decision on rehearing.

The Commission takes notice of the fact that as of February 6, 1975, Holiday suspended operations due to financial difficulties and it surrendered its certificate of airworthiness to the Federal Aviation Administration. Additionally, on February 19, 1975 in Decision No. 84138, the Commission granted PSA and Air California exemptions from the certificate provisions of Sections 2752, 2754, and 2754.1 of the Public Utilities Code for 90 days to serve Tahoe Valley Airport. However, Holiday still retains its certificate of public convenience and necessity and therefore these proceedings are not moot.

IT IS ORDERED that the Petition of Pacific Southwest Airlines, Protestant, for Rehearing After Decision No. 83962 be dismissed.

^{2/} Section 1756, in part: "Within 30 days after the application for a rehearing is denied, or, if the application is granted, then within 30 days after the decision on rehearing, the applicant may apply to the Supreme Court of this State for a writ of certiorari or review for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined." Since petitioner failed to take such action within the time required by Section 1756, the petitioner has lost any right to further review of Decisions Nos. 81893 and 83962.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 4th day of
MARCH, 1975.

Vernon L. Sturgeon
President

William J. ...

[Signature]

Leonard Ross
Commissioners